

BEFORE THE DEPARTMENT OF TRANSPORTATION
OFFICE OF AVIATION ENFORCEMENT AND PROCEEDINGS
WASHINGTON, D.C.

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)	
Benjamin Edelman,)	
third-party complainant)	
)	
v.)	Docket DOT-OST-2022-_____
)	
Emirates Airline)	
)	
-----)	

COMPLAINT OF BENJAMIN EDELMAN

Comments with respect to this document should be addressed to:

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Dated: April 25, 2022

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1. This complaint arises out of Emirates’ cancelling ticketed and confirmed travel, then attempting to charge additional a sizable fare difference for a passenger to travel on the same routing—contrary to both Emirates’ web site promises and its international general tariff. Emirates demands additional payment because one of the passengers was an infant whose increasing age supposedly no longer allows the infant discount. But as discussed below Emirates’ web site promised “no extra fees” for anyone who ticketed in the relevant period (a broad promise that encompasses this situation among many others). More, Emirates’ tariff specifically promises—with remarkable and commendable clarity!—that the only relevant age is the passenger’s age at commencement of travel from the origin. In correspondence, Emirates offers only the slimmest attempt to distinguish the former, and absolutely zero refutation of the latter. This complaint attempts to hold Emirate to its promises.

I. FACTS

2. On December 7, 2019, I redeemed Emirates “Business Rewards” points for my wife and sons (then aged 7 months and 4 years) to travel from Colombo, Sri Lanka to Seattle and return, in business class. I redeemed the required points through Emirates’ online booking tool, and I paid the required taxes and fees by credit card.

3. The passengers traveled the outbound journey on January 7, 2020 as ticketed.

4. The passengers were ticketed and confirmed to travel from Seattle back to Dubai on November 18, 2020. Emirates canceled their flights due to COVID.

5. The passengers now wish to travel. As of the desired date of travel, my sons will be 3 years old and 7 years old, respectively.

II. EMIRATES’ STATEMENTS ABOUT “YOUR TICKET OPTIONS” WHEN IT CANCELS FLIGHTS DUE TO COVID

6. For passengers whose travel was affected by COVID, Emirates publishes “Your Ticket Options” page (YTO) at <https://www.emirates.com/us/english/help/covid-19/ticket-options/>. It provides in relevant part (emphasis added):

For tickets issued on or before September 30, 2020, with a travel date on or before August 31, 2022

You can keep the ticket you’ve already booked and use it later. We’ve extended its validity for 36 months from the date of your original booking. Your ticket will be accepted for any flight to the same destination or within the same region* in the same travel class, with no extra fees during this period. ...

Your ticket will be accepted for any flight to the same destination or within the same region* in any travel class. For example, if your original booking was for London, you can rebook it for Amsterdam for no extra charge. If the itinerary on your original booking did not include Dubai, then you are only able to change your flight for a similar itinerary that does not include Dubai.

7. Note the second underlined passage, indicating “no extra fees.” Nothing on the page indicates any exception to this commitment.

8. Furthermore, Emirates twice promises that “your ticket will be accepted,” indicating that the value of the existing ticket is sufficient, i.e. that no additional payment is required.

III. EMIRATES’ TARIFF SAYS TO HONORS THE LOWER PRICE WHEN AN INFANT OR CHILD GETS OLDER DURING TRAVEL

9. Emirates posts its international general tariff on the web at [https://cdn.ek.aero/downloads/ek/pdfs/Essential Information/201607 EK CA tariff policy.pdf](https://cdn.ek.aero/downloads/ek/pdfs/Essential%20Information/201607_EK_CA_tariff_policy.pdf) . That tariff explicitly discusses the situation of a passenger who gets older during travel, i.e. by being an infant (as defined) at the start of travel but later turning two (hence arguably becoming a child), or by being a child (as defined) at the start of travel but later turning 12 (hence arguably becoming an adult). In both cases, the tariff specifically provides that for purposes of pricing, the relevant passenger age is the passenger age “on the date of commencement of travel from the point of origin.” That is, even if an infant turns two years old at some point during a journey, Emirates’ tariff promises to honor the infant price throughout, and similarly for a child who turns twelve during a journey. See rule 89 (emphasis added):

CHILDREN’S DISCOUNTS - 89

CHILDREN’S DISCOUNTS (CATEGORY 19)

UNLESS OTHERWISE STATED IN A SPECIFIC FARE RULE, PROVISIONS OF RULE 200 (CHILDREN’S AND INFANTS’ FARES) AND RULE 50 (ACCEPTANCE OF CHILDREN), IN THIS TARIFF, AS WELL AS THE FOLLOWING CONDITIONS WILL APPLY.

(1) INFANTS’ FARES: AN INFANT LESS THAN TWO YEARS OF AGE ON THE DATE OF COMMENCEMENT OF TRAVEL FROM THE POINT

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OF ORIGIN WILL BE CHARGED THE AMOUNT SPECIFIED IN THE
FARE RULE. ...

(2) CHILDREN'S FARES: A CHILD WHO IS AT LEAST TWO (2) YEARS
OF AGE BUT LESS THAN 12 YEARS OF AGE ON THE DATE OF
COMMENCEMENT OF TRAVEL FROM THE POINT OF ORIGIN,
ACCOMPANIED BY A PASSENGER WHO IS AT LEAST 18 YEARS OF
AGE, WILL BE CHARGED THE AMOUNT SPECIFIED IN THE SPECIFIC
FARE RULE.

IV. EMIRATES REFUSED TO HONOR ITS WEB SITE AND TARIFF PROVISIONS AS TO PASSENGER AGE

10. On March 1, 2022, I called Emirates telephone reservations to specify new
dates of travel. I remarked on the infant having turned two. The reservations agent told
me that I would need to pay a fare difference because the infant was now a child and
additional charges would apply. I directed the agent's attention to Emirates' Your Ticket
Options page which said there would be no extra fees. The agent said that provision did
not apply to my situation. When I objected, the agent said the charge was valid and my
only option was to contact Emirates customer relations.

11. At the agent's suggestion, I contacted Emirates customer relations through
their web site. I submitted the following message, citing and quoting the Your Ticket
Options page on which I relied:

This round-trip reservation was booked in December 2019 for outbound travel
in January 2020 and return in November 2020, for one adult, one child, and
one lap infant who was age ~8 months as of the first segment. The passengers
flew the outbound as ticketed. Emirates canceled the return due to COVID.
We now seek to rebook consistent with Emirates' "your ticket options -
COVID-19" page which allows three years for travel and states (for tickets
purchased in this period): "Your ticket will be accepted for any flight to the
same destination or within the same region* in the same travel class, with no
extra fees during this period."

During this period, the infant has turned 2, and indeed will soon turn three. He
therefore needs a seat. Emirates telephone reservations staff advised that we
must pay the incremental fare for his travel (half-roundtrip child fare minus
half-roundtrip infant fare). But the "your ticket will be accepted ... with no

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extra fees” promise, quoted above, says no such fee should be payable. Please
confirm that Emirates will honor the fare paid, with no additional fee required,
and annotate the record accordingly so we can set new travel dates without
further difficulty.

12. Emirates replied by email on March 9:

I realize that you’d like us to honor the original infant fare. Sorry but we can’t
do that as he/she now requires a seat.

We’ll have to price the seat accordingly. We can’t consider exceptions on this.
Please call us again once you’re ready to book.

13. In an attempt to resolve this matter without taking the Department’s time,
I sent a message to Emirates’ agent for service of process for DOT matters. I gather he
forwarded my concern to Emirates. Emirates then reiterated its insistence on an
additional fee for an infant who has turned two, and stating that this is “Emirates’ final
position.”

Your son, [redacted], was booked to travel as an infant when you purchased his
ticket 1762333177210 in December 2019 for your intended travel from Seattle
to Colombo, via Dubai, in 2020. As Master Henry is now over 2 years of age,
he is classified as a child as he cannot travel on your lap and must occupy his
own seat in line with our safety procedures. Therefore, you are required to pay
the applicable difference in order to reissue the Seattle to Colombo portion of
Master [redacted]’s ticket to a child fare ticket. We are not in a position to
waive this fare difference. If you would like to proceed with the changes, we
request you to contact +18007773999. Thank you for the opportunity to state
Emirates’ final position.

14. Via a further submission to Emirates customer service, I attached a draft
of this complaint in a final attempt to resolve this matter without taking the Department’s
time. I received a reply from Emirates as shown in Exhibit 1. Let me respond to each of
Emirates’ relevant remarks in turn:

We find that your infant is now over the age of 2 and must occupy a seat. As
is our practice in the industry, for safety reasons, any infant over the age of 2
must occupy a seat.

15. The need for a seat is irrelevant to the question of what fare, if any, is payable for that seat. Certainly there is an industry practice, a safety requirement and indeed a legal duty to provide a seat for each passenger over the age of two.¹ But nothing requires that such a passenger pay an extra fare or fee for such a seat. As to Emirates' invocation of industry practice: When an infant turns two during travel, other carriers routinely provide a seat on a courtesy basis (without additional charge). See e.g. British Airways which promises on its web site to do exactly that.² Nothing in any US or other safety regulation requires Emirates to charge for this service that others, such as BA, offer without charge.

This is stipulated clearly in our United States tariff and clearly enunciated on our website here: <https://www.emirates.com/us/english/help/faq-topics/special-assistance-and-requests/faq/what-are-the-ticketing-rules-for-child-and-infant-passengers-on-emirates/>

16. Emirates' first clause, invoking its tariff, is unavailing. Emirates glaringly fails to cite the specific tariff section(s) it claims are "stipulated clearly," not to mention quote them or even attempt to apply them to the situation at hand. Emirates' tariff is 117 pages of single-spaced all-caps text, with inconsistent indentation and limited formatting indicating section headings. If Emirates truly contends that there is a provision on point supporting its position, Emirates should offer a specific citation. Compare paragraph 9—citing, quoting, and applying tariff rule 89. Based on my review of the Emirates tariff, rule 89 is the only section relevant to a passenger who turns two during a journey.

¹ See 14 CFR 121.311(a)(2), requiring a seat and seatbelt for each passenger age two or older, but notably not requiring any specific payment for such seat.

² See <https://www.britishairways.com/en-us/information/family-travel/tickets-and-travel-documents>; "If you're travelling with an infant who reaches the age of 2 during their journey, your child will need their own seat for any flights on and after their 2nd birthday. We won't charge you extra for this; you'll only pay the infant fare for the entire journey."

17. As to Emirates' second clause, citing a web page: The provisions of the cited web page are contrary to both Emirates' promises elsewhere on its web site (namely on the Your Ticket Options page, as quoted and discussed in paragraph 6) and in its tariff (rule 89, as quoted and discussed in paragraph 9). Where a carrier web page contradicts a benefit in the tariff, the tariff surely supersedes. Where one carrier web page contradicts a benefit in another carrier web page, the passenger is entitled to the better of the options.³ Nothing in the cited page could possibly reduce the benefits in Your Ticket Options page or Emirates tariff rule 89.

We clearly state that there are no additional fees to rebook your ticket. Requiring your infant to occupy a seat does not amount to a fee. It is a difference in fare which must be paid, for the ticket to be reissued as a child ticket. You must not construe a "fare" with a "fee." Emirates will not be waiving this fare difference.

18. Emirates misreads the YTO page. The YTO page provides for travel with "no extra fees." The best understanding of that phrase is to follow its dictionary meaning, i.e. no additional charges of any kind.⁴ That aside, if Emirates seriously contends that "no extra fees" means a commitment only to waive those charges collected as fees (e.g. change fees), but still an obligation to pay charges collected as fare differences, that contention is contradicted by other parts of the YTO page. In particular, for passengers who booked in the time period that applies to my ticket, YTO explicitly waives multiple categories of charges that would ordinarily be collected as fare

³ This follows the longstanding principle of contract law that an ambiguous contract should be interpreted in favor of the party that did not draft it. Contradictory statements on web pages are the epitome of ambiguity.

⁴ This is the best understanding not only because it is the dictionary meaning, but also because it matches the overall architecture of the page. For example, the page uses "no extra fees" and "no extra charge" interchangeably. And as the rest of this paragraph and the next footnote explain, the page uses "no extra fees" to summarize Emirates' commitment not to charge either fare differences or change fees.

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additional fees after airline canceled flights due to COVID; infant getting older differences, not just charges that are collected as fees.⁵ Emirates’ attempt to distinguish “fee” from “fare,” and to waive only the former, is thus contradicted by Emirates’ provisions elsewhere in this same page.

19. Emirates’ interpretation of YTO is also contrary to YTO’s commitment that “your ticket will be accepted for any flight to the same destination.” This sentence promises that the existing ticket, at the existing fare, will suffice. Perhaps the passenger is now traveling in high season, perhaps the desired booking class is no longer available, or perhaps the passenger has lost entitlement to a corporate discount, industry discount, infant discount, child discount, or other basis for a special fare. Nonetheless, Emirates promises that “your ticket”—the passenger’s existing ticket—suffices. This promise rules out Emirates’ attempt to charge a fare difference for an infant who got older.

20. To the extent that YTO leaves any doubt about the treatment of infants who turn two during travel, Emirates tariff rule 89 speaks to this specifically. See paragraph 9 above. If the YTO were ambiguous (though it is not), Emirates would nonetheless be bound by its tariff provision plainly more advantageous to passengers.

As we are unable to bring this matter to an amicable conclusion at this juncture, I would also like to remind you that you are entitled to a full refund for the unused portion of the concerned ticket.

21. A refund of the unused portion of the ticket would be too little to cover the ticketed travel. On information and belief, Emirates would calculate such refund on a half-roundtrip basis. But I would need to buy new tickets on a one-way basis, several times more expensive. A pro rata refund of all three passengers’ tickets would probably

⁵ For my booking period, YTO promises not to collect a fare difference for seasonality (e.g. high season versus low season), booking class (inventory not available in the booking class originally ticketed), and a flight to/from a different destination. Where a passenger in normal circumstances makes any such change, the additional amount payable is calculated as a “fare difference” (e.g. one fare minus another), not merely as a “fee” (an amount certain, e.g. a change fee).

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additional fees after airline canceled flights due to COVID; infant getting older be too little to buy new travel (on the same route, in the same class) for even one of them. Emirates' proposal is thus plainly less advantageous to passengers than the "your ticket will be accepted ... no extra fees" provision of YTO, and plainly less advantageous to passengers than Emirates tariff rule 89.

22. Tellingly, Emirates' reply (Exhibit 1) glaringly failed to address tariff rule 89. That tariff provision specifically speaks to the situation of a passenger turning two. Emirates offered no response because, by all indications, it has none.

V. EMIRATES FAILED TO PROVIDE A FARE QUOTE FOR THE INFANT WHO TURNED TWO

23. Emirates has not told me the exact amount it proposes to charge as the "applicable difference" for my infant who has aged. By telephone on April 8, I attempted to find out the exact additional amount Emirates proposes. I spoke with an agent who said that he could not answer that question and would need to consult with another department, which would email me at an unspecified time in the future. More than two weeks have elapsed, and I have received no such email.

24. Even with access to ATPCO fares, I have been unable to determine the calculation contemplated by paragraph 12.

VI. EMIRATES MUST HONOR ITS WRITTEN COMMITMENTS

25. I seek the exact benefit Emirates promised on its web site: Travel for the passengers ticketed, on the routing ticketed, in the class ticketed, on new dates (within the period of validity Emirates promised), at the exact fare previously paid with "no extra fees" whatsoever. This is also the exact benefit promised in Emirates tariff rule 89: That for purposes of pricing, the age of my youngest child be determined based on his age upon departure from the point of origin, which makes him an infant.

26. I seek no special windfall. One, Emirates has had the benefit of use of my prepaid airfare (including points redemption, taxes, and fees) for nearly two years, including during a period when airlines struggled to raise capital from ordinary sources. Two, a courtesy seat for an infant who has turned two is routinely provided by other carriers in this circumstance, consistent with their tariff commitments to do so. Three, Emirates wrote its YTO page and its tariff, and it is bound by its promises in both documents. I bought tickets governed by the Emirates tariff, and ultimately I seek nothing more than what the tariff plainly promises.

27. Due to Emirates' failures to honor its written commitments, I have spent additional time researching this matter and discussing with its staff. I have also been unable to book travel for other members of my family, or connecting travel for the passengers in this ticket, exposing me to the risk of reduced availability and/or higher prices. Indeed, required connecting travel has become more expensive (on a paid basis) and has become unavailable (for booking with award points), due solely to the delay Emirates has caused through its failure to honor its written commitments.

VII. OTHER PASSENGERS ARE SIMILARLY SITUATED

28. Numerous passengers are likely to be similarly situated. Certainly there are other passengers like me, who had booked travel for an infant, but who faced cancellation due to COVID. Other passengers bought travel for an infant who turned two during travel. The same situations equally apply to children who turned twelve during travel. Based on Emirates' statements to me and its web page <https://www.emirates.com/us/english/help/faq-topics/special-assistance-and-requests/faq/what-are-the-ticketing-rules-for-child-and-infant-passengers-on-emirates/>, it

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appears that Emirates routinely requires all such infants and children to travel on child
and adult tickets, respectively, for the portion of their journey after turning two and
twelve. But Emirates' tariff, as quoted and cited in paragraph 9, specifically rules out
such charges. The Department should investigate all such situations and see that all
affected passengers are properly refunded.

29. I ask that the Department of Transportation:

- (1) Exercise its authority under 49 USC § 41712 to open an investigation of Emirates for
having refused to follow its written commitment and having engaged in the unfair or
deceptive practices described above;
- (2) Order Emirates to transport the ticketed passengers without additional charge
whatsoever;
- (3) Order Emirates to pay the provable damages resulting from its failure to honor its
written commitments;
- (4) Order Emirates to provide to the DOT and to me records sufficient to determine how
many passengers are similarly situated, i.e. were charged (or asked to pay) additional
fees for an infant who has turned two or a child who had turned twelve, in any time
period during which the Emirates tariff promised not to charge such fees;
- (5) Order Emirates to refund the other passengers similarly situated; and
- (6) Impose appropriate civil penalties.

Respectfully submitted,

/s/

Benjamin Edelman

Exhibit 1: Emirates' April 21, 2022 Reply

Our Ref: DXB/X/MR/140322/7762920

21 April 2022

...

Thank you for your email dated 18 April 2022. I also refer to my colleague Manu's response to your earlier communication, dated 14 March 2022. Further, we have received your husband's various emails and brief sent to our local counsel in Washington.

I have personally reviewed your file and am now in a position to respond.

We find that your infant is now over the age of 2 and must occupy a seat. As is our practice in the industry, for safety reasons, any infant over the age of 2 must occupy a seat. This is stipulated clearly in our United States tariff and clearly enunciated on our website here: <https://www.emirates.com/us/english/help/faq-topics/special-assistance-and-requests/faq/what-are-the-ticketing-rules-for-child-and-infant-passengers-on-emirates/>

Owing to the COVID-19 pandemic, Emirates has generously extended your ticket validity to 36 months. Our ticketing policy concerning this can be found here: <https://www.emirates.com/us/english/help/covid-19/ticket-options/>

We clearly state that there are no additional fees to rebook your ticket. Requiring your infant to occupy a seat does not amount to a fee. It is a difference in fare which must be paid, for the ticket to be reissued as a child ticket. You must not construe a "fare" with a "fee." Emirates will not be waiving this fare difference.

As we are unable to bring this matter to an amicable conclusion at this juncture, I would also like to remind you that you are entitled to a full refund for the unused portion of the concerned ticket.

Thank you for writing,

Sincerely yours,

Jonathan Bender

Senior Manager Customer Relations (Worldwide)

Certificate of Service

I hereby certify that I have, this 25th day of April 2022 caused a copy of the foregoing Complaint to be served by electronic mail on the following persons:

David Heffernan, Esq.	dheffernan@cozen.com
Kimberly Graber, Esq.	kimberly.graber@dot.gov
Blane Workie, Esq.	blane.workie@dot.gov
Robert Gorman, Esq.	robert.gorman@dot.gov
Airline Info	info@airlineinfo.com

/s/

Benjamin Edelman